

FILED 09 NOV 23 12:04USDC-ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

GEORGE WILLIAMS, )  
Plaintiff, ) Civil No. 08-623-PK  
v. )  
J.E. THOMAS, Warden, FCI- ) ORDER  
Sheridan, D.O. DR. S. DAVIS, )  
A.W. BOOTH, S.H.A. )  
DELAHARRIS, LIEUTENANT OLSEN, )  
LIEUTENANT CAPE, LIEUTENANT )  
VAN CLEV, LIEUTENANT MORRIS, )  
LIEUTENANT PAYNE, OFFICER )  
HAVERLY, OFFICER DUNCAN, )  
OFFICER WATTSON, CASE MANAGER )  
PERONA, A.W. JACQUEST, )  
PSYCHOLOGY HEAD, FCI-Sheridan,)  
and CAPTAIN, FCI-Sheridan, )  
Defendants. )

HAGGERTY, District Judge.

Currently pending before the court in this civil rights action is defendants' Amended Motion to Dismiss (#48). Defendants contend plaintiff has failed to state a claim under Bivens v. Six Unknown

Federal Narcotics Agents, 403 U.S. 388 (1971) and that his Amended Complaint (first) should be dismissed pursuant to Federal Rule of Civil Procedure 12(b).

According to defendants, plaintiff's Amended Complaint alleges only that defendants violated his constitutional rights by refusing to authorize needed medical care during his incarceration at FCI-Sheridan. Moreover, defendants argue plaintiff fails to allege any personal actions taken by any of the listed defendants in that regard. To the extent the court would read plaintiff's Amended Complaint as alleging excessive use of force claims related to an incident that occurred on April 10, 2008, defendants seek leave to file a motion to stay such claims pending the outcome of a criminal proceeding against plaintiff arising out of that event. See 08-CR-401 HA (Dist. Or.).

In response to defendants' Motion, plaintiff filed a motion for leave to file an amended complaint (second) (#54) and a "Motion Asking the Court to Not Grant Defendants' Motion to Dismiss" (#55). Plaintiff's submissions make clear his desire to bring Eighth Amendment claims against defendants for both failing to provide adequate medical care and for excessive use of force. In addition, in his proposed amended complaint, plaintiff specifically alleges defendants Dr. Stephen Davis and Mr. Ignacio de las Heras failed to uphold their sworn medical duties by refusing plaintiff medical

care following the April 10, 2008 incident, by watching him be assaulted, and by lying in their reports to cover up a crime scene.

Construing plaintiff's pro se submissions liberally, the court acknowledges he has raised Eighth Amendment excessive force claims. Nevertheless, the court agrees with defendants that examination of such claims should await the outcome of the pending criminal action relating to the subject April 10, 2008 incident. Given the greater burden of proof in a criminal case, this is the prudent course. Moreover, rather than stay only a portion of this civil matter, the court, in an exercise of its discretion over the efficient administration of its docket, will stay the entire case. Defendants are directed to provide the court with status reports every 60 days detailing progress in the criminal case. Plaintiff's Motion for Leave to File a (second) Amended Complaint (#54) is granted. Defendants' Motion to Dismiss (#48) is denied.

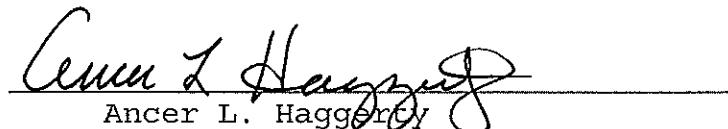
CONCLUSION

This case is STAYED pending resolution of the related criminal matter pending in this court. See 08-CR-401 HA (Dist. Or.). Defendants are directed to provide the court with status reports every 60 days detailing progress in this criminal matter. Plaintiff's Motion for Leave to File a (second) Amended Complaint (#54) is GRANTED. Defendants' Motion to Dismiss (#48) is DENIED and plaintiff's Motion (#55) is DENIED as moot.

In addition, for the reasons set forth in the court's prior Order (#19) plaintiff's renewed Motion for Appointment of Counsel (#53) is DENIED.

IT IS SO ORDERED.

DATED this 23 day of November, 2009.

  
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Ancer L. Haggard  
United States District Judge